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PUGET SOUND ACTION TEAM
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May 19, 2006

Municipal Stormwater NPDES Phase II Comment
Washington Department of Ecology
Water Quality Program
P.O. Box 47696
Olympia, Washington 98504-7696

Dear Colleagues:

Thank you for all of your good work on the "National Pollutant Discharge Elimination System and State Waste Discharge General Permit for Discharges from Small Municipal Separate Storm Sewers in Western Washington." I am submitting these comments on the draft permit in my role as director of the Puget Sound Action Team staff rather than as the chair of the multi-agency Puget Sound Action Team partnership.

Stormwater runoff is one of the leading causes of water pollution in urban areas of Puget Sound. The Governor's Salmon Recovery Office and the Puget Sound Salmon Recovery plan have both cited stormwater as one of the factors limiting recovery of salmonids listed as threatened under the Endangered Species Act. Recently, NOAA Fisheries scientists have undertaken studies to determine the causes of pre-spawn coho salmon mortality in Seattle urban creeks. Scientists have drawn correlations between rainfall events and high percentages of mortality; mortality rates are also much higher in urban than in rural creeks. These initial findings suggest that stormwater may be a significant cause of high percentages of pre-spawn mortality.

NOAA Fisheries scientists have also studied the adverse effects of copper on the olfactory systems of juvenile coho salmon and have found that "short-term influxes of copper to surface waters may interfere with olfactory-mediated behaviors that are critical for the survival and migratory success of wild salmonids." Copper is commonly found in stormwater discharges. Stormwater is also believed to be recontaminating restored sediments in the Thea Foss Waterway.

Given the magnitude and seriousness of these and other problems caused by stormwater in the basin, this permit is critical in our region's ability to mitigate harm from stormwater.

In general, we support the current draft of the permit. We especially support provisions that require the use of the minimum requirements, flow control and treatment standards, use of

forested as the pre-developed condition, and best management practices of the 2005 *Stormwater Management Manual for Western Washington* for all new development and redevelopment

projects. The manual is a key component of our region's toolbox to protect water resources from the adverse effects of stormwater runoff.

We do have several concerns regarding the current draft of the permit. Specifically, we are concerned that:

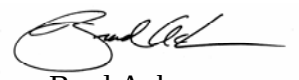
1) The absence of monitoring requirements means that we lose a critical opportunity to generate the information needed to make more informed decisions about the effects of stormwater on aquatic systems and the relative effectiveness of management actions.
2) The use of the one-acre federal threshold rather than the locally adopted thresholds in the *Stormwater Management Manual for Western Washington* will result in many development projects not receiving sufficient regulatory oversight. This perpetuates rather than helps to solve the "death by a thousand cuts" problem that is harming Puget Sound.
3) The permit does not adequately address discharges from existing developed lands.
4) The permit does not cover several shoreline cities, and the urban growth areas of several other cities are not covered.
5) New language under S4, Compliance with Standards, appears to be weaker than the language in the preliminary draft permit.
6) Several timelines in the permit are overly long and in our opinion will delay development of stormwater management programs.

Our most fundamental question about this draft permit is this: *Will this current draft permit move us forward sufficiently to be able to achieve the Governor's goal of a healthy and thriving Puget Sound by 2020?* I hope that as you work towards a final version of the permit, you keep this question squarely in mind.

The Puget Sound Partnership, established by the Governor to set out an agenda to reach a healthy Puget Sound by 2020, has been briefed on and has discussed some of the impacts to Puget Sound from toxics and other chemicals, and from stormwater, and has had some discussion about the current regulatory structure for managing stormwater in the Puget Sound basin. We anticipate that stormwater will be an area where the Partnership sets out specific outcomes for 2020, along with measures and benchmarks. I hope that in finalizing and issuing these permits, the Department anticipates the work of the Partnership and keeps the 2020 goal in the forefront of your analysis.

Attached you will find more detailed comments from our agency. Again, thank you for your work on this important issue and the opportunity to comment. If you have questions on these comments, please contact Bruce Wulkan, the PSAT Program Manager for stormwater and combined sewer overflows, at (360) 725-5455 or at bwulkan@psat.wa.gov.

Sincerely,



Brad Ack
Director

Puget Sound Action Team
Detailed Comments on the Municipal Stormwater NPDES Phase II
Submitted the Puget Sound Action Team

The following specific comments are divided into three parts: Areas of concern, suggestions for improvement, and areas of support.

Areas of Concern

- Absence of monitoring (S8) – The absence of any monitoring from this permit cycle does not support Puget Sound recovery goals by 2020, as articulated by Governor Gregoire and the Puget Sound Partnership. Phase II jurisdictions in the Puget Sound region should be required to coordinate with the region's Phase I permittees regarding monitoring and begin participating in coordinated stormwater and BMP effectiveness monitoring within the timeframe of this permit. Please refer to our comment letter on the Phase I draft permit for additional thoughts on the breadth of monitoring and the need to coordinate monitoring efforts.

  The assignment to permittees to identify potential stormwater monitoring locations is not likely to address monitoring objectives. The fact sheet suggests that monitoring should help to adapt programs. The minimal number of outfalls/conveyances to be identified for long-term stormwater monitoring may not provide a selection of outfalls that would create a sufficiently robust long-term monitoring program to support adaptive management. We therefore suggest that these requirements be replaced with a requirement for state-local coordination in identification of potential stormwater monitoring sites. This should happen within the first three years of this permit cycle.

  The assignment to permittees to identify BMPs to test should be revised to: 1) include additional key BMPs, including bioretention, permeable pavement, and vegetated roofs. We are also curious as to why only "treatment BMPs" are referenced, not flow control; 2) clearly state that the department may need to request that certain permittees may need to test BMPs other than those originally proposed. (The department presumably wants a range of BMPs tested – what if one or two BMPs are tested by 40 jurisdictions while another BMP is not tested at all?)

- Use of the one-acre threshold – The department's decision to rely on the federal threshold in the draft permit of one acre and larger (unless the site is part of a larger development) rather than use region's thresholds, as stated in the *Stormwater Management Manual for Western Washington* (SMMWW), will result in many development projects "flying under the radar" and not receiving the regulatory oversight needed to ensure they are not degrading water quality standards. The first "threshold" in the SMMWW is 2,000 square feet; this initial threshold ensures that all projects do *something*, in this case, erosion and sediment control and other simple measures. But the one-acre threshold in the current draft of the permit means that projects must disturb over 43,500 feet before they are regulated. This very high threshold in the permit may mean little to jurisdictions with mature stormwater management programs, but in other jurisdictions that are only following the minimum requirements of the permit, this will result in a tremendous number of projects that may be degrading Puget Sound not being regulated. This does not

support Puget Sound recovery goals by 2020 as articulated by the governor and Puget Sound Partnership. We urge the department to use the thresholds outlined in the SMMWW rather than using the federal threshold.

- Inadequate attention to existing discharges – We note that reference to existing discharges has been removed from S4, Compliance with Standards. In the preliminary draft permit, permittees were required to take some action on existing discharges to reduce the discharge of pollutants to the maximum extent practicable. As the permit did not require structural stormwater controls, this would presumably occur through source control, public education, regular maintenance, and illicit discharge elimination. We question why this was removed, we question how the current draft of the permit will "make reasonable progress in addressing existing sources of water quality impairment" (as stated in the fact sheet), and we recommend reinserting it in the current draft. This change from the preliminary draft of the permit does not appear to support Puget Sound recovery goals by 2020.

- Not covering certain urban growth areas and shoreline cities – While we support the inclusion in S1, Permit Coverage, of the "bubble" cities of Anacortes, Oak Harbor and Port Angeles for permit coverage, we are concerned that the urban growth areas for these cities are inexplicably not covered by the permit. This is inconsistent with the remainder of the permit, which covers all the urban growth areas of permitted cities. The three cities are projected to grow significantly; electing to not include the designated growth areas may well result in significant new development in the coming years that does not manage stormwater adequately, degraded receiving water quality, harm to species, and building of stormwater facilities that will soon require costly retrofits. We recommend that the department add the urban growth areas for these three cities to the final permit.

  We are also concerned that under S1 several other shoreline cities and other developed areas are not covered by the permit. Each of these areas discharges directly to Puget Sound and is causing some type of water quality impairment. Section 123.35 of the federal rule governing this permit requires that the department "develop a process, as well as criteria, to designative small MS4s other than those described in Section 122.32(a)…" Our work coordinating the Puget Sound Action Team partnership to conserve and recover the Sound's resources leads us to recommend that the department evaluate the following cities and their urban growth areas and other developed areas for permit coverage:
  a. City of Blaine (for stormwater discharges contributing to the downgrade of commercial shellfish growing areas in Drayton Harbor.
  b. City of Port Townsend (for its extensive marine shoreline and potential adverse effects of stormwater discharges on salmonids threatened with extinction that use the city's shoreline area).
  c. City of Sequim (for stormwater discharges to Sequim Bay and the lower Dungeness River, both of which contain shellfish growing areas).
  d. City of Shelton (for stormwater discharges to shellfish growing areas in Oakland Bay and the development of a TMDL for Goldsborough Creek for fecal coliform bacteria. The creek runs through the city).
  e. Belfair urban growth area (for discharges to shellfish growing areas and areas of low dissolved oxygen in Hood Canal and for stormwater discharges named in a TMDL for the Union River. The river runs through the community.)

In addition to the above named municipalities, we recommend that the department evaluate the industrialized area of the Kent Valley for coverage. While this area is not incorporated, it contains vast amounts of impervious surface area that contributes stormwater runoff to the Green River, and eventually Puget Sound.

- Compliance with Standards – The language in S4 has changed considerably from the preliminary draft, and appears to be less protective. The preliminary draft states that "new stormwater discharges must comply with all applicable surface water, ground water and sediment management standards." Yet the current draft simply states that the "permit does not authorize a violation of Washington State surface water quality standards…" and that the permittee shall use MEP and AKART to reduce pollutant loadings. We recommend that the department reinsert language clearly stating that the permit will: a) protect water quality (as stated in the federal rule) and b) comply with all applicable surface water, ground water and sediment management standards. Stormwater is the leading cause of pollution in urban areas of Puget Sound; we feel it is important to start to reverse this trend by ensuring that new stormwater discharges under the NPDES permit system issued today comply with state standards.

- Timelines in S7 Stormwater Management Program – We feel that several of the timelines contained in this section are unnecessarily long. The *Puget Sound Water Quality Management Plan* has called on all cities and counties in the basin to undertake these activities since at least 1994, and many permitted jurisdictions have already done so. We are also concerned that several timelines were changed from the preliminary draft to read "180 days from the expiration of the permit." If the permit is administratively extended, as the Phase I permit was, this could mean that permit provisions might not actually be implemented for 6, 7, or more years. We urge the department to change this language so that all timelines refer to time from permit issuance.

  We offer the following specific comments related to timelines:

  Page 15, starting line 33: Two years to adopt an illicit discharge ordinance and to implement procedures for reporting and correcting illicit discharges seems unnecessarily long. A 2004 survey by the Action Team of Puget Sound local governments revealed that 93% of cities and towns, and 80% of counties responding, already had adopted an ordinance or other regulatory mechanism prohibiting dumping and other illicit discharges. We recommend revising this timeline to one year.

  Page 17, starting line 8: Providing up to 180 days to permit expiration (or 4 ½ years of a 5-year permit) to develop an illicit discharge and spill response program seems unnecessarily long for Puget Sound local governments. The 2004 survey described above revealed that the majority of local government respondents (more than 70%) already had many elements already developed of an illicit discharge elimination program. We recommend revising this timeline to 3 years.

  Page 18, starting line 20: Allowing 180 days to permit expiration (or 4 ½ years of a 5-year permit) for permittees to distribute information to public employees and other groups about the hazards of illicit discharges and improper disposal of wastes seems

entire too long. This information should be distributed to these groups immediately. We recommend revising this timeline to 1 year.

Page 20, line 25: Two years to establish a process of permits, site plan review, inspections and enforcement capacity seems unnecessarily long. The 2004 survey of Puget Sound jurisdictions described above revealed that 100% of the respondents already had in place a process to review site plans, and more than half already conducted inspections and trained staff. We recommend revising this timeline to 1 year.

Page 18, starting line 12: Twenty-one days to initiate an investigation of a reported illicit storm drain connection, and 180 days to ensure termination of that illicit connection, seems unnecessarily long, and might well result in significant pollution. We recommend revising these timelines to 10 days and 90 days, respectively.

Page 22, line 41: Three years to implement an O&M program for municipal operations seems unnecessarily long. The 2004 survey described above revealed that 97% of cities and towns responding already carry out regular maintenance activities for municipally owned and operated stormwater systems. We recommend revising this timeline to 2 years.

Suggestions for improvement

- S5, #4 Controlling Stormwater Runoff from New Development, Redevelopment and Construction Sites – We support inclusion of the 2005 Stormwater Management Manual for Western Washington (SMMWW) for operation and maintenance standards, and feel the manual should be included in element #b (page 20, starting line 25). Specifically, permittees should use for municipal projects and require for private projects erosion and sediment control practices that are at least as stringent as those found in Volume II of the 2005 SMMWW. We recommend including the 12 minimum control measures for erosion and sediment control found in Volume II of the manual. This would significantly strengthen the permit by providing clear expectations for permittees and should help protect state waters by including the most current thinking for managing construction site runoff.

- S5, Public Education and Outreach (page 13, starting line 4) – We find the minimum measures for compliance to be lacking. The requirement that permittees only target two of the eight possible target audiences within two years is puzzling to us because a robust public education and outreach program should target multiple audiences in the community and use a diverse variety of tools and outreach approaches. Local governments in the Puget Sound basin have been directed to develop and carry out a public education and outreach program since the 1980s and many today have very good programs. Some other jurisdictions will need to catch up, but setting the bar for this element so low will result in many jurisdictions never developing adequate public education programs.

  We recommend adding: "The program must include communication to the community regarding the permittee's program activities and specific actions citizens should take to reduce harm from stormwater runoff. Outreach efforts must include a diverse variety of tools and outreach approaches." Communicating how the municipality is using public

funds to protect water quality is an effective method for ensuring that the public will support public programs. The permit should be clear that a variety of outreach methods are required (not just one educational brochure).

We also recommend adding language that permittees may, and are encouraged to, collaborate and cooperate on public education and outreach programs. This should lead to greater efficiencies and improved coordination.

We recommend adding "and the use of less toxic alternatives" to element ii. There are a number of less or non-toxic alternatives to lawn chemicals; every municipality should communicate these to their community.

We recommend adding a new sub-element, or adding language to an existing sub-element, regarding "proper vehicle maintenance, keeping vehicles tuned up and promptly fixing oil leaks, driving less, washing vehicles at commercial car washes or over vegetated areas, and other practices to reduce pollution from cars and trucks." Vehicles are a leading contributor of metals and petroleum products to state waters.

- S5, Public Involvement, starting Page 14, line 22: Overall, the public involvement section of the SWMP is very cursory and should be expanded. We recommend moving specific public involvement techniques from the introductory paragraph to the minimum measures. Specifically: move "ongoing opportunities for public involvement through advisory councils, watershed committees, participation in developing rate-structures, stewardship programs, environmental activities and other similar activities." These activities are important examples of public involvement that should be part of all permittees' programs. We also recommend adding language that permittees may, and are encouraged to, collaborate and cooperate on joint public involvement and participation programs. This should lead to greater efficiencies and improved coordination.

Areas of Support

- S1 Permit Coverage Area and Criteria, page 5, line 11:
  - We support including the urban growth areas associated with the cities covered by this permit. Growth in our state will be directed to these areas – it is reasonable to assure that these rapidly growing areas will require urban levels of stormwater runoff management.
  - We support including the City of Ferndale (page 7, line 21) due to its location on the Nooksack River and potential to degrade water quality if stormwater is not adequately managed.

- S5, Public Education and Outreach, page 14, line 1 – We support including an element on educating multiple audiences on low impact development practices.

- S5 Controlling Stormwater Runoff from New Development, Redevelopment and Construction Sites – We support the following permit provisions:
  - We strongly support including the flow control and treatment standards, and the definition for pre-developed condition, from the 2005 SMMWW in the permit (Appendix 1). The *Regional Nearshore and Marine Aspects of Salmon Recovery in Puget Sound,* delivered to Shared Strategy for Puget Sound for inclusion in the

regional salmon recovery plan, cites stormwater discharges as having adverse effects on salmon and bull trout populations listed as threatened under the Endangered Species Act (page 4-27 table 4-4; page 4-36 table 4-6). The chapter recommends using existing regulatory protection programs to maintain functions and water quality for threatened species and, as needed, refine the programs (page 7-8 table 7.1). Stronger stormwater management standards, particularly stronger flow control and treatment standards, are needed to protect and recover these valuable resources.

- Page 20, line 11: We support the requirement that the program include legal authority to inspect private stormwater facilities. The entire stormwater system, both public and private, must be regularly inspected and maintained to ensure performance.
- Page 20, line 13: We support the requirement to allow source reduction approaches such as low impact development and other measures to minimize the disturbance of soils, native vegetation and natural hydrology at development sites. LID practices hold great promise for helping us manage stormwater runoff more effectively. We recommend adding “native” before soils and vegetation to emphasize the need to protect these features in their natural state.
- Page 21, line 27: We support the requirement to use the 2005 SMMWW for maintenance standards. This manual represents our region’s most comprehensive information on maintenance.
- Page 22, line 10: We support the requirement to inspect all new flow control and water quality treatment facilities, including catch basins, for new development every 6 months during the period of heaviest home construction. These inspections should uncover any problems that might arise, and would allow for speedy, cost-effective solutions.
- Page 23, line 4: We support the requirement that all maintenance standards for municipal operations be at least as protective as those in the 2005 SMMWW.